

STATE OF WASHINGTON
Washington Student Achievement Council

REQUEST FOR QUALIFICATIONS AND QUOTATIONS (RFQQ)
RFQQ NO. 15-RFQQ045

NOTE: If you download this RFQQ from an agency website located at: <http://www.wsac.wa.gov/>, you are responsible for sending your name, address, e-mail address, and telephone number to the RFQQ Coordinator in order for your organization to receive any RFQQ amendments or bidder questions/agency answers.

PROJECT TITLE: Media Buying Services – GET Program

PROPOSAL DUE DATE: August 8, 2013 – 5:00 P.M., *Pacific Standard Time or Pacific Daylight Time, Olympia, Washington, USA.*

E-mailed bids will be accepted. Faxed bids will not be accepted.

ESTIMATED TIME PERIOD FOR CONTRACT: September 9, 2013 – June 30, 2015.
The Agency reserves the right to extend the contract for up to two additional two-year periods at the sole discretion of the Agency.

BIDDER ELIGIBILITY: This procurement is open to those Bidders that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

CONTENTS OF THE REQUEST FOR QUALIFICATIONS AND QUOTATIONS:

1. Introduction
2. General Information for Bidders
3. Proposal Contents
4. Evaluation and Award
5. Exhibits
 - A. Certifications and Assurances
 - B. Professional Service Contract with General Terms and Conditions

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1. INTRODUCTION

1.1. PURPOSE AND BACKGROUND

The Washington Student Achievement Council, hereafter called "AGENCY," is initiating this Request for Qualifications and Quotations (RFQQ) to solicit proposals from firms interested in providing media buying services for the Guaranteed Education Tuition Program (GET).

The Guaranteed Education Tuition Program is Washington's 529 prepaid college tuition plan. GET allows families to prepay for a child's college tuition today. GET accounts are guaranteed to keep pace with college tuition and can be used at nearly any public or private college in the country.

The Washington Student Achievement Council administers the GET Program while the State Investment Board oversees its investments. A five-member committee establishes the policies of the program and sets the price of the GET unit.

1.2. OBJECTIVES AND SCOPE OF WORK

The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

- Meet with GET representatives in September, 2013 and January, 2014 to discuss short and long-term goals, media mix, timing and budget in order to procure television and radio advertising for the enrollment year.
- Create and distribute three Requests for Proposals to radio and television stations statewide in October, 2013 and February/March 2014. Radio ads are planned for approximately November 6-27, 2013 and May 2014. TV ads are planned for approximately mid-March through May 30. Major markets currently include: Puget Sound area, Spokane, Yakima, Tri-Cities, and Southwest Washington. The GET Program reserves the right to modify the list of major markets and timing of the ads.
- Request "added value" from all stations, including on-air matches, on-air interviews, PSAs and Web links/banners.
- Collect and analyze proposals; present proposals for feedback from the GET marketing team at least two weeks prior to airing in order to make adjustments if needed.
- Complete negotiations with responsive radio and television stations as necessary.
- Build final buy and provide copies of media schedule.
- Submit orders to stations.
- Provide the GET marketing team with a complete buy recap within two weeks of placement, including added value. Current and accurate station representative and traffic contact information should be included, along with media specification and distribution requirements. The budget recap should include a breakout by station and a summary by major market that includes the reach and frequency achieved both for the purchased and added value/bonus spots.
- Provide contacts/information for sending traffic instructions and materials.
- Approve any make-goods required during each schedule.
- Distribute television and radio ads to vendors as defined by the buy.
- Review invoices for proof of performance. Approve and process payment of invoices.
- Receive and pay invoices for the 4-5 print advertising outlets whose agreements exceed \$10,000. Print ad agreements and distribution of ads will be handled by GET.

- Set up a reporting accounting system to ensure all media invoices are paid within 30 days of receipt.

The WSAC will:

- Provide payment to Contractor for services and approved invoices from radio and TV outlets within 14 business days of billing notification.
- Manage all print advertising buys including negotiations, review and proof of performance.
- Provide approved invoices to be paid for the 4-5 select vendors for whom agreements exceed \$10,000.

1.3. MINIMUM QUALIFICATIONS

The bidding is open to individuals and organizations that meet the following minimum criteria:

- Bidder must be licensed to perform work in Washington State.
- Bidder must have a minimum of five (5) years of professional statewide media buying experience.
- Bidder must provide at least three (3) non-bidder owned client references for whom the Bidder has provided similar services during the past thirty-six (36) months preceding the bid due date.
- Bidder must provide at least three (3) non-bidder owned media vendor references with whom the Bidder has worked to provide similar services during the past thirty-six (36) months preceding the bid due date.
- Bidder must be insured to the extent required by state law.
- Bidder must be able to provide their tax identification number (TIN) and contract number on all invoices and be registered with the Statewide Vendor System.

Bidders who do not meet these minimum qualifications will be rejected as non-responsive and will not receive further consideration. Any proposal that is rejected as non-responsive will not be evaluated or scored.

1.4. FUNDING

The AGENCY has budgeted an amount not to exceed one million dollars (\$1,000,000) annually or two million dollars (\$2,000,000) for the two-year period, of which no more than thirty-five thousand dollars (\$35,000) annually or seventy thousand dollars (\$70,000) for the two-year period is designated as the contractor fee for services. Proposals in excess of \$2,000,000 for the entire contract or that exceed the \$35,000 annual contractor fee for services will be considered non-responsive and will not be evaluated. In the event that additional funding becomes available, any contract awarded may be renegotiated to provide for additional related services.

Any contract awarded as a result of this procurement is contingent upon the availability of funding.

1.5. PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFQQ is tentatively scheduled to begin on or about September 9, 2013 and to end on June 30, 2015. The AGENCY reserves the right to extend the contract for up to two additional two-year periods. Amendments extending the period of performance, if any, shall be at the sole discretion of the AGENCY.

1.6. CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. Proposers should familiarize themselves with the requirements prior to submitting a proposal that includes current or former state employees.

1.7. DEFINITIONS

Definitions for the purposes of this RFQQ include:

Agency – The Washington Student Achievement Council is the agency of the state of Washington that is issuing this RFQQ.

Apparent Successful Bidder – The Bidder selected as the entity to perform the anticipated services, subject to completion of contract negotiations and execution of a written contract.

Bidder – Individual or company interested in the RFQQ and that may or does submit a proposal in order to attain a contract with the AGENCY.

Contractor – Individual or company whose proposal has been accepted by the AGENCY and is awarded a fully executed, written contract.

Proposal – A formal offer submitted in response to this solicitation.

Proposer – Individual or company that submits a proposal in order to attain a contract with the AGENCY.

Request for Qualifications and Quotations (RFQQ). Formal procurement document in which a service or need is identified. The purpose of an RFQQ is to permit the Bidder community to explain their abilities to meet the need at a given price.

1.8. Americans with Disabilities Act (ADA)

The AGENCY complies with the Americans with Disabilities Act (ADA). Bidders may contact the RFQQ Coordinator to receive this Request for Qualifications and Quotations in braille or on audio tape.

2. GENERAL INFORMATION FOR BIDDERS

2.1. RFQQ COORDINATOR

The RFQQ Coordinator is the sole point of contact in the AGENCY for this procurement. All communication between the Bidder and the AGENCY upon release of this RFQQ shall be with the RFQQ Coordinator, as follows:

Name	Susan Martensen
E-Mail Address	SusanM@wsac.wa.gov
Mailing Address	Washington Student Achievement Council – GET Program PO Box 43450, Olympia WA 98504-3450 OR 919 Lakeridge Way SW, Olympia WA 98502 (for UPS or FEDEX

	deliveries only).
Physical Address for Delivery	919 Lakeridge Way SW Olympia, WA 98502
Phone Number	((Phone)) (Number) No phone calls regarding the RFQQ
Fax Number	((Fax)) (Number) 360.704.6200

Any other communication will be considered unofficial and non-binding on the AGENCY. Bidders are to rely on written statements issued by the RFQQ Coordinator. Communication directed to parties other than the RFQQ Coordinator may result in disqualification of the Bidder.

2.2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue RFQQ	7/25/13
Question & answer period	8/1/13 – 8/2/13
Issue last addendum to RFQQ	8/5/13
Bidder complaint period ends (see section 4.5)	8/1/13
Proposals due	8/8/13 by 5:00 PM PDT
Evaluate proposals	8/9/13-8/15/13
Conduct oral interviews with finalists, if required	8/16/13
Announce “Apparent Successful Bidder” and send notification via fax or e-mail to unsuccessful proposers	8/20/13
Hold debriefing conferences (if requested)	8/27/13
Protest period closes	9/4/13
Negotiate contract	9/3/13-9/5/13
Begin contract work	09/9/13

The AGENCY reserves the right to revise the above schedule.

2.3. SUBMISSION OF PROPOSALS

HARD COPY PROPOSALS: Bidders are required to submit two (2) copies of their proposal. One copy must have original signatures and once copy can have photocopied signatures. The proposal, whether mailed or hand delivered, must arrive at the AGENCY no later than 5:00 PM Pacific Daylight Time on August 8, 2013.

The proposal is to be sent to the RFQQ Coordinator at the address noted in Section 2.1. The envelope should be clearly marked to the attention of the RFQQ Coordinator.

Bidders mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFQQ Coordinator. Bidders assume the risk for the method of delivery chosen. The AGENCY assumes no responsibility for delays caused by any delivery service. Proposals may not be transmitted using facsimile transmission. Proposals may be submitted by email.

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of the AGENCY and will not be returned.

AND/OR

ELECTRONIC PROPOSALS:

The proposal **must be received by the RFQQ Coordinator** no later than 5 p.m., Pacific Daylight Time in Olympia, Washington on Thursday, August 8, 2013.

Proposals must be submitted electronically as an attachment to an e-mail to Susan Martensen, the RFQQ Coordinator, at the e-mail address listed in Section 2.1. Attachments to e-mail shall be in Microsoft Word or PDF format. Zipped files cannot be received by the AGENCY and cannot be used for submission of proposals. The cover submittal letter and the Certifications and Assurances form must have a scanned signature of the individual within the organization authorized to bind the Bidder to the offer. The AGENCY does not assume responsibility for problems with Bidder's e-mail. If the AGENCY'S email is not working, appropriate allowances will be made.

Bidders should allow sufficient time to ensure timely receipt of the proposal by the RFQQ Coordinator. Late proposals will not be accepted and will be automatically disqualified from further consideration, unless the AGENCY'S e-mail is found to be at fault. All proposals and any accompanying documentation become the property of the AGENCY and will not be returned.

2.4. PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Proposals submitted in response to this competitive procurement shall become the property of the AGENCY.

All proposals received shall remain confidential until the contract, if any, resulting from this RFQQ is signed by the Director of the AGENCY and the apparent successful Bidder; thereafter, the proposals shall be deemed public records as defined in RCW 42.56.

Bidder must clearly designate any information in the proposal that the Bidder desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56 or other state or federal law that provides for the nondisclosure of your document. The page must be identified, as well as the particular exception from disclosure upon which the Bidder is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

The AGENCY will consider a Bidder's request for exemption from disclosure; however, the AGENCY will make a decision predicated upon RCW 42.56. Designating the entire proposal exempt from disclosure will not be honored. The Bidder must be reasonable in designating information as confidential. If any information is designated as proprietary in the proposal, such information will not be made available until the affected proposer has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFQQ Coordinator is required. All requests for information should be directed to the RFQQ Coordinator.

2.5. REVISIONS TO THE RFQQ

In the event it becomes necessary to revise any part of this RFQQ, addenda will be provided via e-mail to all individuals who have made the RFQQ Coordinator aware of their interest. Addenda will also be published on <http://www.wsac.wa.gov/>. For this purpose, the published questions and answers and any other pertinent information shall be provided as an addendum to the RFQQ and will be placed on the website.

If you downloaded this RFQQ from the Agency website located at: <http://www.wsac.wa.gov/>, you are responsible for sending your name, e-mail address, and telephone number to the RFQQ Coordinator in order for your organization to receive any RFQQ addenda.

The AGENCY also reserves the right to cancel or to reissue the RFQQ, in whole or in part, prior to execution of a contract.

2.6. MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis.

The established annual procurement participation goals for MBE is 10%, and for WBE 4%, for this type of project. These goals are voluntary. For information on certified firms, Bidders may contact OMWBE at 360-753-9693 or <http://www.omwbe.wa.gov>.

2.7. ACCEPTANCE PERIOD

Proposals must provide sixty (60) days for acceptance by AGENCY from the due date for receipt of proposals.

2.8. RESPONSIVENESS

All proposals will be reviewed by the RFQQ Coordinator to determine compliance with administrative requirements and instructions specified in this RFQQ. The Bidder is specifically notified that failure to comply with any part of the RFQQ may result in rejection of the proposal as non-responsive.

The AGENCY also reserves the right at its sole discretion to waive minor administrative irregularities.

2.9. MOST FAVORABLE TERMS

The AGENCY reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Bidder can propose. There will be no best and final offer procedure. The AGENCY does reserve the right to contact a Bidder for clarification of its proposal.

The Apparent Successful Bidder should be prepared to accept this RFQQ for incorporation into a contract resulting from this RFQQ. Contract negotiations may incorporate some or all of the Bidder's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the AGENCY.

2.10. CONTRACT AND GENERAL TERMS & CONDITIONS

The Apparent Successful Bidder will be expected to enter into a contract that is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is a Bidder to submit its own standard contract terms and conditions in response to this solicitation. The Bidder may submit exceptions as allowed in the Certifications and Assurances form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances form. The AGENCY will review requested exceptions and accept or reject the same at its sole discretion.

2.11. COSTS TO PROPOSE

The AGENCY will not be liable for any costs incurred by the Bidder in preparation of a proposal submitted in response to this RFQQ, in conduct of a presentation, or any other activities related to responding to this RFQQ.

2.12. NO OBLIGATION TO CONTRACT

This RFQQ does not obligate the state of Washington or the AGENCY to contract for services specified herein.

2.13. REJECTION OF PROPOSALS

The AGENCY reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFQQ.

2.14. COMMITMENT OF FUNDS

The Director of the AGENCY or the Director's delegate is the only individual who may legally commit the AGENCY to the expenditures of funds for a contract resulting from this RFQQ. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.15. ELECTRONIC PAYMENT

The state of Washington prefers to utilize electronic payment in its transactions. The successful Bidder will be provided a form to complete with the contract to authorize such payment method.

2.16. INSURANCE COVERAGE

The Contractor is to furnish the Agency with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the AGENCY within fifteen (15) days of the contract effective date.

Liability Insurance

- 1) **Commercial General Liability Insurance:** Contractor shall maintain commercial general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

- 2) **Business Auto Policy:** As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

Employers Liability ("Stop Gap") Insurance: In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The state of Washington, the AGENCY, its elected and appointed officials, agents, and employees shall be named as an additional insured on all general liability, excess, umbrella, and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.
2. **Cancellation.** The AGENCY shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the state 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the state shall be given ten (10) days advance notice of cancellation. Insurers subject to 48.15 RCW: The state shall be given twenty (20) days advance notice of cancellation. If cancellation is due to non-payment of premium, the state shall be given ten (10) days advance notice of cancellation.
3. **Identification.** Policy must reference the state's contract number and the agency name.
4. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the AGENCY's Risk Manager, or the Risk Manager for the state of Washington, before the contract is accepted or work may begin.

If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

5. **Excess Coverage.** By requiring insurance herein, the state does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the state in this contract.

Workers' Compensation Coverage

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The state will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

3. PROPOSAL CONTENTS

Proposals must be written in English and submitted on eight and one-half by eleven inch (8 1/2" x 11") paper (if hard copy) with tabs separating the major sections of the proposal. The four major sections of the proposal are to be submitted in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFQQ)
2. Technical Proposal
3. Management Proposal
4. Cost Proposal.

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Bidder in preparing a thorough response.

Items marked "mandatory" must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

3.1. LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFQQ) must be signed and dated by a person authorized to legally bind the Bidder to a contractual relationship, e.g. the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include, by attachment, the following information about the Bidder and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
3. Legal status of the Bidder (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.

4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue. If the Bidder does not have a UBI number, the Bidder must state that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparent Successful Bidder.
5. Location of the facility from which the Bidder would operate if selected as the Apparent Successful Bidder.
6. Identification of any state employees or former state employees employed by the firm or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Bidder's organization. If, following a review of this information, it is determined by the AGENCY that a conflict of interest exists, the Bidder may be disqualified from further consideration for the award of a contract.

3.2. TECHNICAL PROPOSAL (SCORED)

The Technical Proposal must contain a comprehensive description of services including the following elements:

- A. Quality of Work Plan** – Include all project requirements and the proposed tasks, services, activities, etc., necessary to accomplish the scope of the project defined in this RFQQ. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Bidder's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of AGENCY staff. The Bidder may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.
- B. Project Schedule** – Include a project schedule indicating when the elements of the work will be completed. Project schedule must ensure that any deliverables requested are met. Describe the firm's ability to meet deadlines, especially on a short-time frame, and give examples of how past tight deadlines have been successfully met.
- C. Risks** – The Bidder must identify potential risks that are considered significant to the success of the project. Include how the Bidder would propose to effectively monitor and manage these risks, including reporting of risks to the AGENCY'S contract manager.

3.3. MANAGEMENT PROPOSAL

A. Project Management (SCORED)

1. **Project Team Structure/Internal Controls** – Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.
2. **Staff Qualifications/Experience** – Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project.

Provide resumes for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. The Bidder must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the AGENCY.

B. Experience of the Bidder (SCORED)

1. Describe how you currently meet or intend to meet the minimum qualifications set out in section 1.3, above.
2. Indicate the experience the Bidder and any subcontractors have in the following areas associated with the services described in this RFQQ:
 - a. Describe your experience purchasing statewide broadcast media as described in the Scope of Work. Describe how your use of current research (e.g. Nielsen, Arbitron, Strata) has informed your media purchases. Give specific examples of any work done for Washington State and/or local government agencies, private non-profit organizations or other related entities on a similar project.
 - b. Describe the process involved in building a statewide media campaign for radio and television and the steps involved in completing it. Provide at least three (3) different examples of work similar to that described in the Scope of Work with your RFQQ submission.
 - c. Articulate how you have built relationships with local media and how that will translate into added value for GET. Give at least three examples of how negotiations on a client's behalf have resulted in lower costs, matching spots, PSAs and other value-added elements. Indicate other relevant experience that indicates the qualifications of the Bidder, and any subcontractors, for the performance of the potential contract.
3. Include a list of contracts the Bidder has had during the last five years that relate to the Bidder's ability to perform the services needed under this RFQQ period of performance, contact persons, telephone numbers, and e-mail addresses.

C. Related Information (MANDATORY)

1. If the Bidder or any subcontractor contracted with the state of Washington during the past 24 months, indicate the name of the agency, the contract number(s) and project description, and/or other information available to identify the contract(s).
2. If the Bidder's staff or subcontractor's staff, or member of the Bidder's governing board, was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual(s) by name, the agency previously or currently employed by, job title or position held, and separation date. Include their position and responsibilities within the Bidder's organization. If following a review of this information, it is determined by the AGENCY that a conflict of interest exists, the Bidder may be disqualified from further consideration for the award of a contract.

3. If the Bidder has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Bidder's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated, and such litigation determined that the Proposer was in default. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Bidder's position on the matter. The AGENCY will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Bidder in the past five years, so indicate.

D. References (MANDATORY)

List names, addresses, telephone numbers, and e-mail addresses of three (3) business references for the Bidder and three (3) business references for the lead staff person, including client and media references, for whom or with whom work has been accomplished, and briefly describe the type of service provided. Do not include current AGENCY staff as references. The Bidder and the lead staff person must grant permission to the AGENCY to contact the references and others who may have pertinent information regarding the Bidder's and the lead staff person's qualifications and experience to perform the services required by this RFQQ. The AGENCY may evaluate references at the AGENCY'S discretion.

E. OMWBE Certification (OPTIONAL AND NOT SCORED)

Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) if certified minority-owned firm or women-owned firm(s) will be participating on this project. For information:
<http://www.omwbe.wa.gov>.

3.4. COST PROPOSAL

The maximum fee for this two year contract must be two million dollars (\$2,000,000) or less in order to be considered responsive to this RFQQ. The maximum contractor fee included must be no more than \$70,000 (\$35,000 annually).

The evaluation process is designed to award this procurement not necessarily to the Bidder of least cost, but rather to the Bidder whose proposal best meets the requirements of this RFQQ. However, Bidders are encouraged to submit proposals which are consistent with state government efforts to conserve state resources

A. Identification of Costs (SCORED)

Please provide a total project cost, estimated number of hours and an hourly rate for media purchases and negotiations using the projected 2013-14 advertising budget in the chart below. The actual amounts may vary for the 2013-14 enrollment year.

Identify all costs in U.S. dollars, including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Bidder is to submit a fully detailed budget, including staff costs and any expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Bidders are required to collect and pay Washington state sales and use taxes, as applicable.

Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Office of Minority and Women's Business Enterprises.

Timing of buy	Budgeted (Net)
Fall 2013 Radio (Seattle, Spokane, Tri-Cities, Yakima) – 3 weeks	\$150,000
Print/Online (Agreements > \$10,000)	\$85,000
Winter/Spring 2014 Television/Cable (Seattle, Spokane, Yakima/Tri-Cities, SW Washington) – 10 weeks	\$530,000
Spring 2013 Radio (Seattle, Spokane, Tri-Cities, Yakima) – 4 weeks	\$200,000
Total	\$965,000

B. Computation

The score for the cost proposal will be computed by dividing the lowest cost bid received by the Bidder's total cost. Then the resultant number will be multiplied by the maximum possible points for the cost section

4. EVALUATION AND CONTRACT AWARD

4.1. EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team(s), to be designated by the AGENCY, which will determine the ranking of the proposals.

AGENCY, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

The RFQQ Coordinator may contact the Bidder for clarification of any portion of the Bidder's proposal.

4.2. EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

Technical Proposal – 25%		25 points
Quality of Work Plan	15 points (maximum)	
Project Schedule & Risks	10 points (maximum)	
Management Proposal – 60%		60 points
Team Structure/Qualifications	10 points (maximum)	
Experience of the Bidder	50 points (maximum)	
Cost Proposal – 15 %		15 points
TOTAL		100 POINTS

AGENCY reserves the right to award the contract to the Bidder whose proposal is deemed to be in the best interest of the AGENCY and the state of Washington.

4.3. ORAL PRESENTATIONS MAY BE REQUIRED

The AGENCY may, after evaluating the written proposals, elect to schedule oral presentations of the finalists. Should oral presentations become necessary, the AGENCY will contact the top-scoring firm(s) from the written evaluation to schedule a date, time, and location. Commitments made by the Bidder at the oral interview, if any, will be considered binding.

The scores from the written evaluation and the oral presentation combined together will determine the apparent successful Bidder.

4.4. NOTIFICATION TO BIDDERS

The AGENCY will notify the Apparently Successful Bidder of their selection in writing upon completion of the evaluation process. Individuals or firms whose proposals were not selected for further negotiation or award will be notified separately by e-mail.

4.5. COMPLAINT PROCEDURE

Complaints may be made by any vendor who is a prospective bidder. The complaint process occurs early in the solicitation to catch mistakes and errors before vendors must submit a bid. A vendor may file a complaint based on one or more of the following reasons:

- The solicitation unnecessarily restricts competition.
- The evaluation/scoring process is unfair or flawed.
- The requirements are inadequate or insufficient so that a response is difficult to prepare.

Complaints must be in writing, describe the reason(s) for the complaint, and provide sufficient basis for the complaint. The complaint must state the RFQQ number, the reason(s) for the complaint with specific facts and complete statements of the basis for the complaint. A description of the corrective action or remedy being requested must also be included.

Complaints must be signed by the vendor or an authorized Agent.

Complaints may be submitted by mail, e-mail, or hand delivered and must be addressed to the RFQQ coordinator.

Complaints must be received by the RFQQ coordinator no later than 5:00 PM, local time, in Olympia, Washington on the fifth (5th) business days prior to when the bids are due. Complaints received less than five (5) business days prior to when the bids are due will be reviewed and considered only as time permits.

The RFQQ coordinator will respond in writing to all complaints within three (3) business days of receipt of the complaint, and a copy of the response will be posted on WEBS. The response will include the decision, how the review was conducted, and the basis upon which a decision was made. The agency decision regarding the complaint is not appealable or repeatable.

4.6. DEBRIEFING OF UNSUCCESSFUL BIDDERS AND PROTEST PROCEDURE

Any Bidder who has submitted a proposal and been notified that they were not selected for contract award may request a debriefing. The request for a debriefing conference must be received by the RFQQ Coordinator within three (3) business days after either the Unsuccessful Bidder Notification is e-mailed to the Bidder or the Notice of Successful Bidder is posted on WEBS, whichever is sooner. Debriefing requests must be received by the RFQQ Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the third business day following the transmittal of the Unsuccessful Bidder Notification or posting of the Notice of Successful Bidder on WEBS, whichever is sooner. The debriefing must be held within three (3) business days of the request.

Requests for a debriefing conference must be in writing describe the reason(s) the debriefing conference is being requested, and provide sufficient basis for the request. The request for a debriefing conference must state the RFQQ number, the reason(s) for the request with specific facts and complete statements of the basis for the request. A description of the corrective or remedial action being requested must also be included. Requests for a debriefing conference must be signed by the vendor or an authorized Agent.

Discussion at the debriefing conference will be limited to the following:

- The agency's failure to follow the process articulated in the RFQQ.
- Evaluation and scoring of the Bidder's proposal.
- Critique of the Bidder's proposal based on the evaluation.
- Review of Bidder's final score in comparison with other final scores without identifying the other firms.

The RFQQ coordinator will schedule the debriefing conference for a maximum of one hour which must be held within three (3) business days of the request, and will promptly notify the Bidder of the debriefing conference date and time. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

Protests may be made only by Bidders who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Bidder is allowed five (5) business days to file a protest of the acquisition with the RFQQ Coordinator. Protests must be in writing and received by the RFQQ Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the fifth business day following the debriefing. Protests may be submitted by e-mail, but must then be followed by the document with an original signature.

Bidders protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Bidders under this procurement.

All protests must be in writing, addressed to the RFQQ Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFQQ number, the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination, or conflict of interest on the part of an evaluator.
- Errors or flaws in the scoring process.

- Non-compliance with procedures described in the procurement document or AGENCY policy.

Protests not based on one or more of the three issues immediately above will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) AGENCY'S assessment of its own or other agencies' needs or requirements.

Upon receipt of a protest, a protest review will be held by the AGENCY. The AGENCY Director, or an employee delegated by the Director who was not involved in the procurement, will consider the record and all available facts and issue a decision within ten (10) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Bidder that also submitted a proposal, such Bidder will be given an opportunity to submit its views and any relevant information on the protest to the RFQQ Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the AGENCY's action; or
- Find only technical or harmless errors in the AGENCY's acquisition process and determine the AGENCY to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the AGENCY options which may include:
 - Correct the errors and re-evaluate all proposals; and/or
 - Reissue the solicitation document and begin a new process; or
 - Make other findings and determine other courses of action as appropriate.

If the AGENCY determines that the protest is without merit, the AGENCY will enter into a contract with the Apparent Successful Bidder. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken. The RFQQ coordinator will post a copy of the protest and determination on WEBS.

5. RFQQ EXHIBITS

Exhibit A Certifications and Assurances

Exhibit B Professional Service Contract Format including General Terms and Conditions (GT&Cs)

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract:

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the AGENCY without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. If there are exceptions to these assurances, I/we have described them in full detail on a separate page attached to this document.
5. I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the AGENCY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly, to any other Proposer or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
9. I/we grant the AGENCY the right to contact references and others who may have pertinent information regarding the ability of the Bidder and the lead staff person to perform the services contemplated by this RFQQ.
10. If any staff member(s) who will perform work on this contract has retired from the State of Washington under the provisions of the 2008 Early Retirement Factors legislation, his/her name is noted on a separate attached page.

We (circle one) **are / are not** submitting proposed Contract exceptions. (See Section 2.11, Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.

On behalf of the Bidder submitting this proposal, my name below attests to the accuracy of the above statement

Signature of Proposer

Title

Date

Contract No. 15-RFQQ045

Contract for Professional Services
between the
State of Washington
Washington Student Achievement Council
and
(Contractor)

This Contract is made and entered into by and between the state of Washington, Washington Student Achievement Council, hereinafter referred to as the "AGENCY," and the below named firm, hereinafter referred to as "CONTRACTOR."

(Contractor Name)

(address)

(city, state, zip)

Phone: (Phone Number)

FAX: (Fax)

Email: (Email)

Federal TIN: (TIN #)

WA State UBI Number: (UBI #)

PURPOSE

The purpose of this contract is to provide media buying services for the Guaranteed Education Tuition (GET) program.

The Guaranteed Education Tuition Program is Washington's 529 prepaid college tuition plan. GET allows families to prepay for a child's college tuition today. GET accounts are guaranteed to keep pace with college tuition and can be used at nearly any public or private college in the country.

The Washington Student Achievement Council administers the GET Program while the State Investment Board oversees its investments. A five-member committee establishes the policies of the program and sets the price of the GET unit.

SCOPE OF WORK

- A. Exhibit A, attached hereto and incorporated by reference, contains the *General Terms and Conditions* governing work to be performed under this contract, the nature of the working relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.
- B. The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:
- Meet with GET representatives in September, 2013 and January, 2014 to discuss short and long-term goals, media mix, timing and budget in order to procure television and radio advertising for the enrollment year.
 - Create and distribute three Requests for Proposals to radio and television stations statewide in October, 2013 and February/March 2014. Radio ads are planned for approximately November 6-27, 2013 and May 2014. TV ads are planned for approximately mid-March through May 30. Major markets currently include: Puget Sound area, Spokane, Yakima, Tri-Cities, and Southwest Washington. The GET Program reserves the right to modify the list of major markets and timing of the ads.
 - Request "added value" from all stations, including on-air matches, on-air interviews, PSAs and Web links/banners.
 - Collect and analyze proposals; present proposals for feedback from the GET marketing team at least two weeks prior to airing in order to make adjustments if needed. .
 - Complete negotiations with responsive radio and television as necessary.
 - Build final buy and provide copies of media schedule.
 - Submit orders to stations.
 - Provide the GET marketing team with a complete buy recap within two weeks of placement, including added value. Current and accurate station representative and traffic contact information should be included, along with media specification and distribution requirements. The budget recap should include a breakout by station and a summary by major market that includes the reach and frequency achieved both for the purchased and added value/bonus spots.
 - Provide contacts/information for sending traffic instructions and materials.
 - Approve any make-goods required during each schedule.
 - Distribute television and radio ads to vendors as defined by the buy.
 - Review invoices for proof of performance. Approve and process payment of invoices.
 - Receive and pay invoices for the 4-5 print advertising outlets whose agreements exceed \$10,000. Print ad agreements and distribution of ads will be handled by GET.
 - Set up a reporting accounting system to ensure all media invoices are paid within 30 days of receipt.

All deliverables required under this contract must be delivered to Susan Martensen, the Contract Manager, in accordance with the schedule above.

PERIOD OF PERFORMANCE

The period of performance under this contract will be from September 9, 2013, or date of execution, whichever is later, through June 30, 2015.

COMPENSATION

Total compensation payable to CONTRACTOR for satisfactory performance of the work under this contract shall not exceed _____ for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. No more than _____ is designated as the annual contractor fee for services.

CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following term:

(enter hourly rates, hrs per task, unit prices, or reference document that specified contractor's compensation and payment.)

BILLING PROCEDURES AND PAYMENT

AGENCY will pay CONTRACTOR upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Contract Manager not more often than monthly.

The invoices shall describe and document, to the AGENCY'S satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the contract reference number (Contract Number). If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Payment shall be considered timely if made by the AGENCY within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

The AGENCY may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the AGENCY.

CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this contract.

CONTRACTOR Contract Manager	AGENCY Contract Manager
(Enter Contract Manager's Name)	Susan Martensen
(Enter Name of CONTRACTOR)	Washington Student Achievement Council
(Enter CONTRACTOR Address)	919 Lakeridge Way SW
(Enter City, State & Zip Code)	P.O. Box 43450
	Olympia, WA 98504-3450

<i>Phone :</i> ((Phone)) (Number) <i>Fax:</i> ((Fax)) (Number) <i>Email address:</i> (Email)	<i>Phone:</i> (360) 753-7828 <i>Fax:</i> (360) 704-6200 <i>Email address:</i> SusanM@wsac.wa.gov
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INSURANCE

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while performing under the terms of this contract.

The CONTRACTOR shall provide insurance coverage, which shall be maintained in full force and effect during the term of this contract, as follows:

1. Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.

Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

2. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
3. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington and its agents and employees as additional insureds under the insurance policy/ies.

All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give AGENCY thirty (30) calendar days advance notice of any insurance cancellation.

CONTRACTOR shall submit to AGENCY within fifteen (15) calendar days of the contract effective date a certificate of insurance that outlines the coverage and limits defined in the *Insurance* section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

ASSURANCES

AGENCY and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state, and local laws, rules, and regulations.

ORDER OF PRECEDENCE

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal and state of Washington statutes and regulations
2. Special terms and conditions as contained in this basic contract instrument

3. Exhibit A – General Terms and Conditions
4. Exhibit B – Request for Proposals No. 15-RFQQ045
5. Exhibit C – Contractor's Proposal dated (Date)
6. Any other provision, term or material incorporated herein by reference or otherwise incorporated

ENTIRE AGREEMENT

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

APPROVAL

This contract shall be subject to the written approval of the AGENCY'S authorized representative and shall not be binding until so approved. If this is a Sole Source Contract and unless otherwise exempt, it is not binding until approved by the Department of Enterprise Services, and until other posting requirements have been met. This contract was filed with DES on (enter date), posted on the Washington State enterprise vendor registration and bid notification system on (enter date), and posted on the AGENCY's website on (enter date). The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of five (5) pages and three (3) attachments is executed by the persons signing below, who warrant they have the authority to execute the contract.

[CONTRACTOR'S NAME]

Washington Student Achievement Council

Signature

Signature

Title

Date

Title

Date

APPROVED AS TO FORM:

Assistant Attorney General

Date

**[Contract] EXHIBIT A -
GENERAL TERMS AND CONDITIONS**

DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "AGENCY" shall mean the Washington Student Achievement Council of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- B. "AGENT" shall mean the Executive Director of the Washington Student Achievement Council, and/or the delegate authorized in writing to act on the Executive Director's behalf.
- C. "CONTRACTOR" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- D. "SUBCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.

ACCESS TO DATA

In compliance with RCW 39.26.180, the CONTRACTOR shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the CONTRACTOR'S reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

AMENDMENTS

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the CONTRACTOR without prior written consent of the AGENCY.

ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The CONTRACTOR shall not use or disclose any information concerning the AGENCY, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by the AGENT that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the AGENCY shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of the AGENCY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the AGENT makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

COPYRIGHT PROVISIONS

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the AGENCY. The AGENCY shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, CONTRACTOR hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the AGENCY effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, CONTRACTOR hereby grants to the AGENCY a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the AGENCY.

The CONTRACTOR shall exert all reasonable effort to advise the AGENCY, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for securing business.

The AGENCY shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with AGENT.

1. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issue(s);
 - State the relative positions of the parties;
 - State the CONTRACTOR'S name, address, and contract number; and
 - Be mailed to the AGENT and the other party's (respondent's) contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working calendar days.
3. The AGENT shall review the written statements and reply in writing to both parties within 10 working days. The AGENT may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

DUPLICATE PAYMENT

The AGENCY shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

GOVERNING LAW

This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

CONTRACTOR'S obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTORS' agents, employees, representatives, or any subcontractor or its employees.

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to CONTRACTOR'S or any subcontractor's performance or failure to perform the contract. CONTRACTOR'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this contract. The CONTRACTOR and his or her employees or agents performing under this contract are not employees or agents of the AGENCY. The CONTRACTOR will not hold himself/herself out as or claim to be an officer or employee of the AGENCY or of the State of Washington by reason hereof, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

INDUSTRIAL INSURANCE COVERAGE

The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, AGENCY may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The AGENCY may deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by the AGENCY under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the CONTRACTOR.

LICENSING, ACCREDITATION AND REGISTRATION

The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

LIMITATION OF AUTHORITY

Only the AGENT or AGENT'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the AGENT.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

In the event of the CONTRACTOR'S non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the AGENCY. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION

During the performance of this contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies.

PRIVACY

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the AGENCY for any damages related to the CONTRACTOR'S unauthorized use of personal information.

PUBLICITY

The CONTRACTOR agrees to submit to the AGENCY all advertising and publicity matters relating to this contract wherein the AGENCY'S name is mentioned or language used from which the connection of the AGENCY'S name may, in the AGENCY'S judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of the AGENCY.

RECORDS MAINTENANCE

The CONTRACTOR shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

CONTRACTOR shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the AGENCY, personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE

The CONTRACTOR shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

RIGHT OF INSPECTION

The CONTRACTOR shall provide right of access to its facilities to the AGENCY, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the AGENCY may terminate the contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the AGENCY'S discretion under those new funding limitations and conditions.

SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

SITE SECURITY

While on AGENCY premises, CONTRACTOR, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

SUBCONTRACTING

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY.

In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the Department for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

TAXES

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR.

TERMINATION FOR CAUSE

In the event the AGENCY determines the CONTRACTOR has failed to comply with the conditions of this contract in a timely manner, the AGENCY has the right to suspend or terminate this contract. Before suspending or terminating the contract, the AGENCY shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The AGENCY reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by the AGENCY to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the AGENCY provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, the AGENCY may, by 10 calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the AGENCY shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES

Upon termination of this contract, the AGENCY, in addition to any other rights provided in this contract, may require the CONTRACTOR to deliver to the AGENCY any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The AGENCY shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by the AGENCY, and the amount agreed upon by the CONTRACTOR and the AGENCY for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the AGENCY, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AGENT shall determine the extent of the liability of the AGENCY. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The AGENCY may withhold from any amounts due the CONTRACTOR such sum as the AGENT determines to be necessary to protect the AGENCY against potential loss or liability.

The rights and remedies of the AGENCY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the AGENT, the CONTRACTOR shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the AGENCY, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the AGENCY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENT to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the AGENCY and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the contract had been completed, would have been required to be furnished to the AGENCY;
6. Complete performance of such part of the work as shall not have been terminated by the AGENT; and
7. Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the CONTRACTOR and in which the AGENCY has or may acquire an interest.

TREATMENT OF ASSETS

- A. Title to all property furnished by the AGENCY shall remain in the AGENCY. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the AGENCY upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in the AGENCY upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs.

- B. Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this contract.
- C. The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCY that results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- D. If any AGENCY property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
- E. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY prior to settlement upon completion, termination or cancellation of this contract
- F. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

WAIVER

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the AGENCY.